

ARKANSAS SUPREME COURT

No. CR 06-148

NOT DESIGNATED FOR PUBLICATION

DARRELL WATSON
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered October 5, 2006

PRO SE APPEAL FROM THE CIRCUIT
COURT OF PULASKI COUNTY, CR
2002-4270, HON. JOHN W.
LANGSTON, JUDGE

AFFIRMED

PER CURIAM

Appellant Darrell Watson was found guilty of aggravated robbery and theft of property in a trial to the bench and received an aggregate sentence of 264 months' imprisonment in the Arkansas Department of Correction. Appellant appealed the conviction and the judgment was affirmed by the Arkansas Court of Appeals. *Watson v. State*, CACR 04-1398 (Ark. App. August 31, 2005). On November 14, 2005, appellant timely filed in the trial court a petition for postconviction relief under Ark. R. Crim. P. 37.1, which was dismissed. Appellant now brings this appeal of that order.

The trial court found that appellant's petition exceeded the ten-page limitation in Rule 37.1.¹ Appellant's petition consisted of nine pages that comprised the body of the petition, two pages containing the prayer for relief, appellant's notarized signature and a certificate of service, and a two-page affidavit attached in support. Appellant filed on November 21, 2005, a request for leave to

¹ Prior to its amendment on February 2, 2006, Rule 37.1(e) provided that the petition "shall not exceed ten pages in length." As revised, Rule 37.1(b) provides for a ten-page limitation on petitions.

amend the petition and exceed the page limit. That request was not addressed in the appealed order, and a later order, not the subject of this appeal, was entered addressing it.

Although it did not address it, the appealed order in effect denied appellant's request to file an overlength petition. Under Rule 37.1(e), a petition not in compliance could only be filed with leave of the court. Our standard of review on a question of summary dismissal of a Rule 37.1 petition on the basis of exceeding the ten-page limit is whether the trial court abused its discretion. *Sanders v. State*, 352 Ark. 16, 98 S.W.3d 35 (2003).

The rule limiting petitions under Rule 37.1 to ten pages is a reasonable restriction on petitioners seeking postconviction relief. *Id.* Here, the trial court, relying on *Sanders*, did not count Watson's certificate of service, prayer for relief or his notarized signature, which appear on separate pages. However, Watson's affidavit was attached to his petition and was counted and included in the page count, which exceeded the ten-page limitation. *See Sanders, supra* (where this court reaffirmed that exhibits attached to the petition are counted for purposes of determining whether the petition conforms to the ten-page limitation); *see also Washington v. State*, 308 Ark. 322, 823 S.W.2d 900 (1992) (*per curiam*).

Citing Ark. Sup. Ct. R. 4-2(c), appellant argues that the circuit clerk should have rejected his petition and notified him to resubmit a complying petition. The rule he cites in support of requiring the clerk to provide notice is only applicable to *briefs* filed with this court's clerk, not petitions filed in the trial court for postconviction relief. Appellant has provided no basis to support an abuse of discretion. Accordingly, we affirm the trial court's dismissal of appellant's petition.

Affirmed.